Pirelli Cable Corporation *and* International Brotherhood of Electrical Workers, Local Union 2236, AFL–CIO, CLC *and* H. Dean Simpson. Cases 11–CA–15987, 11–CA–16121, 11–CA–16149, 11–CA–16300, 11–CA–16365, 11–CA–16475, 11–CA–16536, 11–CA–16670, 11–CA–16708, 11–CA–16727, 11–CA–16754, 11–CA–16844, and 11–CA–16160

June 18, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On July 18 and August 29, 1996, Administrative Law Judge Lawrence W. Cullen issued the attached decisions.[1] The Respondent filed exceptions and supporting briefs in both cases, and a reply brief in *Pirelli I*; the General Counsel filed exceptions in *Pirelli I* and answering briefs in both cases; and the Charging Party filed cross-exceptions and a supporting brief in *Pirelli I*, and answering briefs in both cases.[2]

The National Labor Relations Board has considered the decisions and the record in light of the exceptions and briefs, and has decided to affirm the judge's rulings, findings,[3] and conclusions as modified and set forth in full below, and to adopt the recommended Orders as modified[4] and set forth in full below.

1. We agree with the judge that the Respondent's April 20, 1994[5] letter threatening employees with the loss of their jobs if they went out on strike was a contributing cause of the strike the Respondent's employees engaged in from May 5 to June 20. We thus agree with the judge that because the striking employees were unfair labor practice strikers the Respondent was required to reinstate them on their unconditional offer to return to work, and that the Respondent violated the Act by not reinstating them. In view of our agreement with the judge in these respects, we find it unnecessary to reach his alternative unfair labor practice findings that are based on the assumption that the strike was an economic strike, because the remedies for such violations are subsumed within the remedies to which the employees are entitled as unfair labor practice strikers.[6]

2. We agree with the judge that the Respondent's withdrawal of recognition from the Union on August 1 violated Section 8(a)(5) and (1). Although the Respondent had received an employee petition seeking

[1] We grant the General Counsel's unopposed motion to consolidate Cases 11–CA–15987, et al. (*Pirelli I*) with Cases 11–CA–16670, et al. (*Pirelli II*).

[2] We deny the Respondent's motion to strike the Charging Party's answering brief. Contrary to the Respondent's contention, we find that the brief does not exceed the 50-page limitation set forth in Sec. 102.46(j) of the Board's Rules.

[3] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondent excepts to the judge's decision in *Pirelli I*, asserting that it evidences bias and prejudice. On our full consideration of the entire record in this proceeding, we find no evidence that the judge prejudged the cases, made prejudicial rulings, or demonstrated bias against the Respondent in his analysis and discussion of the evidence.

We do not adopt the judge's finding in *Pirelli I* that the Respondent violated Sec. 8(a)(1) by insisting that the parties sign the return to work agreement. The complaint did not allege that the Respondent violated the Act as the judge found, and the matter was not fully litigated by the parties.

We make the following factual clarifications and corrections:

1. The factual finding in the fifth sentence of the second paragraph in "The Failure to Afford the Strikers Their Laidlaw Rights" section of the judge's decision in *Pirelli I* is based on Land's testimony. Neither Kelley nor Warren testified.

2. In the "Alleged discrimination against specific employees" section of *Pirelli I*, the judge stated that he credited the testimony of John H. Wilson III. Wilson, however, did not testify at the hearing. The record shows that the judge was referring to Ricky Ferguson's testimony.

[4] We shall modify the judge's recommended Order to include the narrow cease-and-desist language traditionally used by the Board.

The judge recommended that the Union's certification begin on the date the Respondent complies with the Board's Order. This type of remedy, the so-called *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962), remedy, is designed to ensure good-faith bargaining for a year after a union's certification. Because in the instant case the certification year expired long before the Respondent's violations of the Act, we shall not adopt the judge's recommendation.

We shall correct the judge's inadvertent omission from his recommended Order of unfair labor practice striker Samuel T. Clinkscales.

[5] All subsequent dates are in 1994 unless otherwise indicated.

[6] We specifically refer to the following alternative findings:

1. That the Respondent terminated employees and denied employees their recall rights as economic strikers (*Pirelli I*).

2. That the Respondent terminated Samuel Fleming's employment rights and failed to reinstate Ricky Ferguson and William Riley Jr. (*Pirelli I*).

3. That the Respondent terminated employees from the preferential hiring list (*Pirelli II*).

4. That the Respondent hired temporary employees rather than reinstating strikers (*Pirelli II*).

We do adopt, however, the judge's findings in *Pirelli II* that the Respondent disparately treated Charles Tinch by imposing conditions on his return to work and then discharging him.

We also agree with the judge's finding in *Pirelli I* that the Respondent's treatment of James McCord violated the Act. McCord was not working when the strike began because he was receiving workers' compensation benefits due to a job injury. An employer may not treat an employee who is not able to work as a striker. See *Conoco, Inc.*, 265 NLRB 815, 821 (1982), enfd. 740 F.2d 811 (10th Cir. 1984). Thus, by declaring him to be on strike, by canceling his benefits, and, after the strike ended, by refusing to permit him to return to work, even though he was temporarily released by his doctor to return to work, the Respondent violated the Act. In order to remedy the Respondent's unlawful treatment of McCord, we agree with the judge that he should be offered reinstatement and be made whole for the losses he suffered as a result of the discrimination against him.

decertification of the Union, we find, for the reasons set forth below, and in agreement with the judge, that the Respondent was not privileged to rely on the petition, because it was tainted by the Respondent's prior unfair labor practices.

It is well established that an employer's reasonably based doubt as to a union's continued majority status "must be raised in a context free of unfair labor practices of the sort likely, under all the circumstances, to affect the union's status, cause employee disaffection, or improperly affect the bargaining relationship itself." *Lee Lumber & Building Material Corp.*, 322 NLRB 175, 177 (1996). In cases involving unfair labor practices other than a general refusal to recognize and bargain, the Board considers the following factors to determine whether there is a causal connection between an employer's unlawful conduct and the subsequent expression of employee disaffection with an incumbent union:

> (1) The length of time between the unfair labor practices and the withdrawal of recognition; (2) the nature of the illegal acts, including the possibility of their detrimental or lasting effect on employees; (3) any possible tendency to cause employee disaffection from the union; and (4) the effect of the unlawful conduct on employee morale, organizational activities, and membership in the union.[7]

In this case, we find that the Respondent committed unfair labor practices that would tend to cause significant employee dissatisfaction with the Union. On April 20, the Respondent violated Section 8(a)(1) of the Act by sending employees a letter threatening them with loss of their jobs if they engaged in protected strike activity. After the parties' contract expired on May 2, the Respondent violated Section 8(a)(5) by unilaterally implementing substantial changes in employee terms and conditions of employment.[8] The Respondent's unlawful threat of job loss was a contributing cause of the strike that commenced on May 5, and when the employees offered to return to work on June 20, the Respondent again violated the Act by refusing to reinstate them. Most significantly, the employee petition was signed immediately after the Respondent unlawfully failed to reinstate the unfair labor practice strikers.[9] Prior to the Respondent's commission of unfair labor practices, there is no evidence that the unit employees were dissatisfied with the Union, which had represented them for more than 25 years.

In sum, only about 2 months elapsed between the Respondent's first unfair labor practice and the employees' signing of the petition. At the beginning of that period, the Respondent directed a highly coercive threat of job loss to employees in the event they decided to go on strike.[10] By the end of the period, the strikers had, in fact, been denied reinstatement to their former positions, notwithstanding their desire to return to their jobs. In the interim, the Respondent bypassed the Union and set terms and conditions on its own.[11] With the employees out of work and the Union seemingly powerless to help them, the cumulative effect of the Respondent's unlawful conduct would reasonably be to cause employees to abandon the Union.

Under these circumstances, we find that the employee petition was tainted by the Respondent's unfair labor practices and that, therefore, the Respondent may not rely on the petition to establish a good-faith doubt that the Union represented a majority of employees.[12] The Respondent, therefore, violated Section 8(a)(5) by withdrawing recognition from the Union and, further, the Respondent violated Section 8(a)(5) by unilaterally instituting changes to employees' terms and conditions of employment after August 1.

3. As previously noted, the Respondent violated the Act by unilaterally changing employees' terms and conditions of employment on May 2 and August 1. In addition to the changes enumerated by the judge, we find that the Respondent also unlawfully changed its employees' health insurance benefits.[13]

CONCLUSIONS OF LAW

1. The Respondent, Pirelli Cable Corporation, is an employer within the meaning of Section 2(6) and (7) of the Act.

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[7] *Williams Enterprises*, 312 NLRB 937, 939 (1993), enfd. 50 F.3d 1280 (4th Cir. 1995), citing *Master Slack Corp.*, 271 NLRB 78, 84 (1984).

[8] On or about May 2, the Respondent changed the job bid procedure; instituted a fourth shift; changed the wage rate and job requirements for die control employees; changed its shift swap practices; and assigned supervisors to do unit work. The Respondent claims it could unilaterally implement these changes to the employees' terms and conditions of employment, because the Union had agreed to them during contract negotiations. We do not agree. The Respondent does not claim that a bargaining impasse existed and does not claim that the parties had agreed on a contract, only that some contractual items had been agreed on. In this regard, the Boards finds that an employer is not privileged to implement agreed-on proposals on a piecemeal basis during bargaining in the absence of agreement. Here there was no such agreement. *Long Island Day Care Services*, 303 NLRB 112, 116 fn. 15 (1991).

[9] The signatures are dated between June 22 and 28.

[10] See *NLRB v. Jamaica Towing, Inc.*, 632 F.2d 208, 212–213 (2d Cir. 1980) (threats of loss of employment are "highly coercive" and are "likely to have a lasting inhibitive effect").

[11] The Board has recognized that unlawful unilateral changes tend to cause employee disaffection with their bargaining representative. *Powell Electrical Mfg. Co.*, 287 NLRB 969 (1987), enfd. as modified on other grounds 906 F.2d 1007 (5th Cir. 1990).

[12] In view of this finding, we find it unnecessary to pass on the judge's discussion of the alleged deficiencies in the petition and the other factors the Respondent cited for justifying withdrawal of recognition.

[13] The judge inadvertently failed to include this change in his findings. The record contains ample evidence that the Respondent unilaterally changed health insurance benefits in May 1995.

2. International Brotherhood of Electrical Workers, Local Union 2236, AFL–CIO, CLC is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining:

> All production and maintenance employees, including shipping and receiving employees, inspectors, and leadmen employed by the Respondent at its Abbeville, South Carolina plant and warehouses, but excluding office clerical employees, professional employees, casual employees, guards, janitors, and supervisors as defined in the Act.

4. The Respondent violated Section 8(a)(1) of the Act by sending a letter to its employees stating that they could lose their jobs if they engaged in a strike and failing to advise them of their right to be placed on a preferential hire list if they go on strike and are permanently replaced.

5. The strike was an unfair labor practice strike and the Respondent violated Section 8(a)(3) and (1) of the Act by failing to reinstate unfair labor practice strikers immediately on the unconditional offer to return to work made on their behalf by their union representatives.

6. The Respondent violated Section 8(a)(1) of the Act by threatening to "drag this case out" and by stating that Union Officials Warren and Tollison would not be recalled because of their participation in the strike.

7. The Respondent violated Section 8(a)(3) and (1) of the Act by removing James McCord from his disability status and canceling his benefits, including his health insurance, and by refusing to permit him to return to work after he was temporarily released to return to work.

8. The Respondent violated Section 8(a)(3) and (1) of the Act by disparately treating Charles Tinch in recalling him to work from the preferential hire list, but imposing conditions on his return and by discharging and failing to reinstate him because he engaged in a strike.

9. The Respondent violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from the Union, refusing to bargain with the Union, refusing to furnish the Union with information necessary to its role as the collective-bargaining representative of the unit employees, and refusing to process grievances.

10. The Respondent violated Section 8(a)(5) and (1) of the Act by implementing the following changes in the terms and conditions of employment of unit employees without notice to or bargaining with the Union:

(a) Changing its job bid procedure.

(b) Implementing a fourth shift.

(c) Assigning supervisors bargaining unit work.

(d) Raising the wages of leadmen.

(e) Changing its practices regarding vacation requests and granting of vacation days.

(f) Changing its shift swap practices.

(g) Changing the wage rate and job requirements for die control employees.

(h) Changing its attendance policy by changing the point value for failure to call in when absent, changing the number of allowable medical excuses in a rolling year, changing the perfect attendance system and assigning additional benefits thereto, and changing the call-in procedure.

(i) Changing health insurance benefits.

11. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

The National Labor Relations Board adopts the recommended Orders of the administrative law judge as modified and set forth in full below and orders that the Respondent, Pirelli Cable Corporation, Abbeville, South Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees that they could lose their jobs if they engaged in a strike and failing to advise them of their right to be placed on a preferential hire list if they go on strike and are permanently replaced.

(b) Failing and refusing to reinstate unfair labor practice strikers immediately on their unconditional offer to return to work.

(c) Threatening employees that the Respondent would "drag this case out" and stating that union officials would not be recalled because of their participation in the strike.

(d) Discriminating against employees by removing them from disability status and canceling their benefits, including health insurance, and refusing to permit them to return to work after they are temporarily released to return to work.

(e) Discriminating against employees by recalling them to work subject to conditions placed on their return to work, and then discharging and refusing to reinstate them because they engaged in a strike.

(f) Withdrawing recognition from International Brotherhood of Electrical Workers, Local Union 2236, AFL–CIO, CLC refusing to bargain with the Union, refusing to furnish the Union with information necessary to its role as the collective-bargaining representative of the unit employees, and refusing to process grievances.

(g) Implementing the following changes in the terms and conditions of employment of unit employees without notice to or bargaining with the Union:

(a) Changing its job bid procedure.

(b) Implementing a fourth shift.
(c) Assigning supervisors bargaining unit work.
(d) Raising the wages of leadmen.
(e) Changing its practices regarding vacation requests and granting of vacation days.
(f) Changing its shift swap practices.
(g) Changing the wage rate and job requirements for die control employees.
(h) Changing its attendance policy by changing the point value for failure to call in when absent, changing the number of allowable medical excuses in a rolling year, changing the perfect attendance system and assigning additional benefits thereto, and changing the call-in procedure.
(i) Changing health insurance benefits.

(h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer the following employees full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed, discharging, if necessary, any replacement employees:

Larry Davis, Wendel Ferguson, Charles Cullen, David Bell, John Pat Brown, Willie Cole, Geo. Van Johnson, Andy Bannister, David Belton, Clarence Morton, John McPhall, Eddie Cunninham, Charlie Ramey, Douglas McCall, David Crawford, Walter Wilson, Vester Gable, Charles Willis, Bradley McCord, Marshall Brown, Wm. Riley Jr., Proctor Ashley, Jesse Johnson, Johnny K. Slay, J. R. Kimsey Jr., Albert Hagen, Walter Garner, Bruce Winn, Wm. McCall, Ira Latham, Franklin Page, Charles Kirkland, Samuel Fleming, James Belcher, Charles McGee, Robert Hughes, Bobby Fortescue, Lawyer Cowan, James A. Riley, David Land, Ronald T. Page, Samuel T. Clinkscales, C. W. Sutherland, T. M. Bradberry, L. T. Partridge, Emory Morton, Jimmy Loftis, J. H. Wilson III, J. M. Henderson, J. A. Laster Jr., Horace Rollinson, R. C. Clinkscales, Raymond Durant, Howard Gray, John S. Aiken, Robert L. Franklin, C. W. Wilson Sr., C. Johnny Moss, C. W. Wilson Jr., Howard Akien, A. Killingsworth, R. Ferguson, Randy C. Gable, Stanley Chiles, W. E. Latham Jr., M. D. Taylor Jr., John T. Bell, Oscar E. Burton, Ben E. Hunter, Wallace Spencer, Tim P. Dove, Aubry D. Cheek, R. E. Burton Jr., Stuart Baskin, James T. Cannady, Phillip R. Manley, B. A. Perrin, H. L. Bailey, M. R. Enwright, J. V. Ashley, R. V. Brown, James P. McCord, S. E. Crawford, Lonnie E. Thomas, E. J. Crabb Jr., Wm. R. Cheek, J. T. Tollison, W. Killingsworth, J. W. Ferguson Jr., J. E. McCurry, Charles W. Link, Eugene Tatum, S. E. McDuffie, Dennis R. Scott, E. D. Warren, J. L. Crawford, Herman L. Price, Edwin T. Hannah, K. R. Culbreth, Rickey Gibson, C. D. Kilgore Jr., Chris Morton, Ben Williams, Moses Mattison, Larry C. Gray, Odis Walton, G. M. Williams, J. H. Sutherland, C. E. Tinch, M. Jackson Jr., J. B. Ferguson, E. R. Morton Jr., Curtis Siebert, E. V. Gray, M. A. Hagen, J. W. Pauul, N. McNair, B. L. Paul, Michael Childs, B. J. Coleman, Wesley Gibson, J. M. McDonald, Stanley G. Murray, Melvin K. Bonds, W. D. Sparks, G. M. Ellis, J. O. Oliver Jr., Melvin E. Ashley, J. O. Coleman, S. E. Brownlee, C. C. Brown, R. F. Donaldson, R. R. Simpson, Keith Stanley, Chiris Singletary, B. J. Johnson, R. E. Moss, J. T. Nabors, L. R. Kimsey, J. R. Turner, F. Y. Norton Jr., Dexter R. Harris, Tony Hedden, W. M. Anderson, K. E. Sellers, R. Coates, K. L. Ashley, R. McMurtury, R. M. Prince Jr., T. D. Sparks, Isaiah Gray, R. E. Brownlee, R. B. Freeman, and Simeon L. Spearman.

(b) Make the following employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the judge's decisions:

Larry Davis, Wendel Ferguson, Charles Cullen, David Bell, John Pat Brown, Willie Cole, Geo. Van Johnson, Andy Bannister, David Belton, Clarence Morton, John McPhall, Eddie Cunninham, Charlie Ramey, Douglas McCall, David Crawford, Walter Wilson, Vester Gable, Charles Willis, Bradley McCord, Marshall Brown, Wm. Riley Jr., Proctor Ashley, Jesse Johnson, Johnny K. Slay, J. R. Kimsey Jr., Albert Hagen, Walter Garner, Bruce Winn, Wm. McCall, Ira Latham, Franklin Page, Charles Kirkland, Samuel Fleming, James Belcher, Charles McGee, Robert Hughes, Bobby Fortescue, Lawyer Cowan, James A. Riley, David Land, Ronald T. Page, Samuel T. Clinkscales, C. W. Sutherland, T. M. Bradberry, L. T. Partridge, Emory Morton, Jimmy Loftis, J. H. Wilson III, J. M. Henderson, J. A. Laster Jr., Horace Rollinson, R. C. Clinkscales, Raymond Durant, Howard Gray, John S. Aiken, Robert L. Franklin, C. W. Wilson Sr., C. Johnny Moss, C. W. Wilson Jr., Howard Akien, A. Killingsworth, R. Ferguson, Randy C. Gable, Stanley Chiles, W. E. Latham Jr., M. D. Taylor Jr., John T. Bell, Oscar E. Burton, Ben E. Hunter, Wallace Spencer, Tim P. Dove, Aubry D. Cheek, R. E. Burton Jr., Stuart Baskin, James T. Cannady, Phillip R. Manley, B. A. Perrin, H. L. Bailey, M. R. Enwright, J. V. Ashley, R. V. Brown, James P.

McCord, S. E. Crawford, Lonnie E. Thomas, E. J. Crabb Jr., Wm. R. Cheek, J. T. Tollison, W. Killingsworth, J. W. Ferguson Jr., J. E. McCurry, Charles W. Link, Eugene Tatum, S. E. McDuffie, Dennis R. Scott, E. D. Warren, J. L. Crawford, Herman L. Price, Edwin T. Hannah, K. R. Culbreth, Rickey Gibson, C. D. Kilgore Jr., Chris Morton, Ben Williams, Moses Mattison, Larry C. Gray, Odis Walton, G. M. Williams, J. H. Sutherland, C. E. Tinch, M. Jackson Jr., J. B. Ferguson, E. R. Morton Jr., Curtis Siebert, E. V. Gray, M. A. Hagen, J. W. Pauul, N. McNair, B. L. Paul, Michael Childs, B. J. Coleman, Wesley Gibson, J. M. McDonald, Stanley G. Murray, Melvin K. Bonds, W. D. Sparks, G. M. Ellis, J. O. Oliver Jr., Melvin E. Ashley, J. O. Coleman, S. E. Brownlee, C. C. Brown, R. F. Donaldson, R. R. Simpson, Keith Stanley, Chiris Singletary, B. J. Johnson, R. E. Moss, J. T. Nabors, L. R. Kimsey, J. R. Turner, F. Y. Norton Jr., Dexter R. Harris, Tony Hedden, W. M. Anderson, K. E. Sellers, R. Coates, K. L. Ashley, R. McMurtury, R. M. Prince Jr., T. D. Sparks, Isaiah Gray, R. E. Brownlee, R. B. Freeman, and Simeon L. Spearman.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful actions against the following employees, and within 3 days thereafter, notify each of them in writing that this has been done and that these actions will not be used against them in any way:

Larry Davis, Wendel Ferguson, Charles Cullen, David Bell, John Pat Brown, Willie Cole, Geo. Van Johnson, Andy Bannister, David Belton, Clarence Morton, John McPhall, Eddie Cunninham, Charlie Ramey, Douglas McCall, David Crawford, Walter Wilson, Vester Gable, Charles Willis, Bradley McCord, Marshall Brown, Wm. Riley Jr., Proctor Ashley, Jesse Johnson, Johnny K. Slay, J. R. Kimsey Jr., Albert Hagen, Walter Garner, Bruce Winn, Wm. McCall, Ira Latham, Franklin Page, Charles Kirkland, Samuel Fleming, James Belcher, Charles McGee, Robert Hughes, Bobby Fortescue, Lawyer Cowan, James A. Riley, David Land, Ronald T. Page, Samuel T. Clinkscales, C. W. Sutherland, T. M. Bradberry, L. T. Partridge, Emory Morton, Jimmy Loftis, J. H. Wilson III, J. M. Henderson, J. A. Laster Jr., Horace Rollinson, R. C. Clinkscales, Raymond Durant, Howard Gray, John S. Aiken, Robert L. Franklin, C. W. Wilson Sr., C. Johnny Moss, C. W. Wilson Jr., Howard Akien, A. Killingsworth, R. Ferguson, Randy C. Gable, Stanley Chiles, W. E. Latham Jr., M. D. Taylor Jr., John T. Bell, Oscar E. Burton, Ben E. Hunter, Wallace Spencer, Tim P. Dove, Aubry D. Cheek, R. E. Burton Jr., Stuart Baskin, James T. Cannady, Phillip R. Manley, B. A. Perrin, H. L. Bailey, M. R. Enwright, J. V. Ashley, R. V. Brown, James P. McCord, S. E. Crawford, Lonnie E. Thomas, E. J. Crabb Jr., Wm. R. Cheek, J. T. Tollison, W. Killingsworth, J. W. Ferguson Jr., J. E. McCurry, Charles W. Link, Eugene Tatum, S. E. McDuffie, Dennis R. Scott, E. D. Warren, J. L. Crawford, Herman L. Price, Edwin T. Hannah, K. R. Culbreth, Rickey Gibson, C. D. Kilgore Jr., Chris Morton, Ben Williams, Moses Mattison, Larry C. Gray, Odis Walton, G. M. Williams, J. H. Sutherland, C. E. Tinch, M. Jackson Jr., J. B. Ferguson, E. R. Morton Jr., Curtis Siebert, E. V. Gray, M. A. Hagen, J. W. Pauul, N. McNair, B. L. Paul, Michael Childs, B. J. Coleman, Wesley Gibson, J. M. McDonald, Stanley G. Murray, Melvin K. Bonds, W. D. Sparks, G. M. Ellis, J. O. Oliver Jr., Melvin E. Ashley, J. O. Coleman, S. E. Brownlee, C. C. Brown, R. F. Donaldson, R. R. Simpson, Keith Stanley, Chiris Singletary, B. J. Johnson, R. E. Moss, J. T. Nabors, L. R. Kimsey, J. R. Turner, F. Y. Norton Jr., Dexter R. Harris, Tony Hedden, W. M. Anderson, K. E. Sellers, R. Coates, K. L. Ashley, R. McMurtury, R. M. Prince Jr., T. D. Sparks, Isaiah Gray, R. E. Brownlee, R. B. Freeman, and Simeon L. Spearman.

(d) Recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit concerning terms and conditions of employment, furnish the Union with information it requested on August 1, 1994, which is necessary to its role as the collective-bargaining representative of the unit employees, and process grievances on request. The appropriate unit is:

All production and maintenance employees, including shipping and receiving employees, inspectors, and leadmen employed by the Respondent at its Abbeville, South Carolina plant and warehouses, but excluding office clerical employees, professional employees, casual employees, guards, janitors, and supervisors as defined in the Act.

(e) On request of the Union, rescind any or all unilateral changes implemented by the Respondent, as noted above, restore the terms and conditions of employment that previously existed, until such time as the Respondent negotiates in good faith with the Union to agreement or to impasse, and make its employees whole for any loss of wages or other benefits incurred by them as a result of its unlawful unilateral changes, in the manner set forth in the remedy section of the judge's *Pirelli I* decision. Nothing herein shall require the Respondent to rescind any increases or improvements in wages or benefits, or to rescind new or addi-

tional benefits granted, without a request from the Union.

(f) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its Abbeville, South Carolina facilities, copies of the attached notice marked "Appendix."[14] Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 28, 1994.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[14] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten our employees that they could lose their jobs if they engage in a strike and WE WILL NOT fail to advise our employees of their right to be placed on a preferential hire list if they go on strike and are permanently replaced.

WE WILL NOT fail and refuse to reinstate unfair labor practice strikers immediately on their unconditional offer to return to work.

WE WILL NOT threaten our employees that we will "drag this case out" and WE WILL NOT threaten that union officials will not be recalled because of their participation in a strike.

WE WILL NOT remove employees from disability status and cancel their benefits, including health insurance, and refuse to permit them to return to work after they are temporarily released to return to work.

WE WILL NOT disparately treat employees by recalling them to work subject to conditions placed on their return to work, and WE WILL NOT then discharge and fail to reinstate them because they engaged in a strike.

WE WILL NOT withdraw recognition from the Union as the collective-bargaining representative of our employees in the appropriate unit, refuse to bargain with the Union regarding terms and conditions of employment of our employees in the appropriate unit, refuse to furnish the Union with information necessary to its role as the collective-bargaining representative of our employees in the appropriate unit, and refuse to process grievances. The appropriate unit is:

> All production and maintenance employees, including shipping and receiving employees, inspectors, and leadmen employed at our Abbeville, South Carolina, plant and warehouses, but excluding office clerical employees, professional employees, casual employees, guards, janitors, and supervisors as defined in the Act.

WE WILL NOT implement changes in the terms and conditions of employment of our employees in the appropriate unit without notice to or bargaining with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer the following employees full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, discharging, if necessary, any replacement employees:

> Larry Davis, Wendel Ferguson, Charles Cullen, David Bell, John Pat Brown, Willie Cole, Geo. Van Johnson, Andy Bannister, David Belton, Clarence Morton, John McPhall, Eddie Cunninham, Charlie Ramey, Douglas McCall,

David Crawford, Walter Wilson, Vester Gable, Charles Willis, Bradley McCord, Marshall Brown, Wm. Riley Jr., Proctor Ashley, Jesse Johnson, Johnny K. Slay, J. R. Kimsey Jr., Albert Hagen, Walter Garner, Bruce Winn, Wm. McCall, Ira Latham, Franklin Page, Charles Kirkland, Samuel Fleming, James Belcher, Charles McGee, Robert Hughes, Bobby Fortescue, Lawyer Cowan, James A. Riley, David Land, Ronald T. Page, Samuel T. Clinkscales, C. W. Sutherland, T. M. Bradberry, L. T. Partridge, Emory Morton, Jimmy Loftis, J. H. Wilson III, J. M. Henderson, J. A. Laster Jr., Horace Rollinson, R. C. Clinkscales, Raymond Durant, Howard Gray, John S. Aiken, Robert L. Franklin, C. W. Wilson Sr., C. Johnny Moss, C. W. Wilson Jr., Howard Akien, A. Killingsworth, R. Ferguson, Randy C. Gable, Stanley Chiles, W. E. Latham Jr., M. D. Taylor Jr., John T. Bell, Oscar E. Burton, Ben E. Hunter, Wallace Spencer, Tim P. Dove, Aubry D. Cheek, R. E. Burton, Jr., Stuart Baskin, James T. Cannady, Phillip R. Manley, B. A. Perrin, H. L. Bailey, M. R. Enwright, J. V. Ashley, R. V. Brown, James P. McCord, S. E. Crawford, Lonnie E. Thomas, E. J. Crabb Jr., Wm. R. Cheek, J. T. Tollison, W. Killingsworth, J. W. Ferguson Jr., J. E. McCurry, Charles W. Link, Eugene Tatum, S. E. McDuffie, Dennis R. Scott, E. D. Warren, J. L. Crawford, Herman L. Price, Edwin T. Hannah, K. R. Culbreth, Rickey Gibson, C. D. Kilgore Jr., Chris Morton, Ben Williams, Moses Mattison, Larry C. Gray, Odis Walton, G. M. Williams, J. H. Sutherland, C. E. Tinch, M. Jackson Jr., J. B. Ferguson, E. R. Morton Jr., Curtis Siebert, E. V. Gray, M. A. Hagen, J. W. Pauul, N. McNair, B. L. Paul, Michael Childs, B. J. Coleman, Wesley Gibson, J. M. McDonald, Stanley G. Murray, Melvin K. Bonds, W. D. Sparks, G. M. Ellis, J. O. Oliver Jr., Melvin E. Ashley, J. O. Coleman, S. E. Brownlee, C. C. Brown, R. F. Donaldson, R. R. Simpson, Keith Stanley, Chiris Singletary, B. J. Johnson, R. E. Moss, J. T. Nabors, L. R. Kimsey, J. R. Turner, F. Y. Norton Jr., Dexter R. Harris, Tony Hedden, W. M. Anderson, K. E. Sellers, R. Coates, K. L. Ashley, R. McMurtury, R. M. Prince Jr., T. D. Sparks, Isaiah Gray, R. E. Brownlee, R. B. Freeman, and Simeon L. Spearman.

WE WILL make the following employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, less any net interim earnings, plus interest:

Larry Davis, Wendel Ferguson, Charles Cullen, David Bell, John Pat Brown, Willie Cole, Geo. Van Johnson, Andy Bannister, David Belton, Clarence Morton, John McPhall, Eddie Cunninham, Charlie Ramey, Douglas McCall, David Crawford, Walter Wilson, Vester Gable, Charles Willis, Bradley McCord, Marshall Brown, Wm. Riley Jr., Proctor Ashley, Jesse Johnson, Johnny K. Slay, J. R. Kimsey Jr., Albert Hagen, Walter Garner, Bruce Winn, Wm. McCall, Ira Latham, Franklin Page, Charles Kirkland, Samuel Fleming, James Belcher, Charles McGee, Robert Hughes, Bobby Fortescue, Lawyer Cowan, James A. Riley, David Land, Ronald T. Page, Samuel T. Clinkscales, C. W. Sutherland, T. M. Bradberry, L. T. Partridge, Emory Morton, Jimmy Loftis, J. H. Wilson III, J. M. Henderson, J. A. Laster Jr., Horace Rollinson, R. C. Clinkscales, Raymond Durant, Howard Gray, John S. Aiken, Robert L. Franklin, C. W. Wilson Sr., C. Johnny Moss, C. W. Wilson Jr., Howard Akien, A. Killingsworth, R. Ferguson, Randy C. Gable, Stanley Chiles, W. E. Latham Jr., M. D. Taylor Jr., John T. Bell, Oscar E. Burton, Ben E. Hunter, Wallace Spencer, Tim P. Dove, Aubry D. Cheek, R. E. Burton Jr., Stuart Baskin, James T. Cannady, Phillip R. Manley, B. A. Perrin, H. L. Bailey, M. R. Enwright, J. V. Ashley, R. V. Brown, James P. McCord, S. E. Crawford, Lonnie E. Thomas, E. J. Crabb Jr., Wm. R. Cheek, J. T. Tollison, W. Killingsworth, J. W. Ferguson Jr., J. E. McCurry, Charles W. Link, Eugene Tatum, S. E. McDuffie, Dennis R. Scott, E. D. Warren, J. L. Crawford, Herman L. Price, Edwin T. Hannah, K. R. Culbreth, Rickey Gibson, C. D. Kilgore Jr., Chris Morton, Ben Williams, Moses Mattison, Larry C. Gray, Odis Walton, G. M. Williams, J. H. Sutherland, C. E. Tinch, M. Jackson Jr., J. B. Ferguson, E. R. Morton Jr., Curtis Siebert, E. V. Gray, M. A. Hagen, J. W. Pauul, N. McNair, B. L. Paul, Michael Childs, B. J. Coleman, Wesley Gibson, J. M. McDonald, Stanley G. Murray, Melvin K. Bonds, W. D. Sparks, G. M. Ellis, J. O. Oliver Jr., Melvin E. Ashley, J. O. Coleman, S. E. Brownlee, C. C. Brown, R. F. Donaldson, R. R. Simpson, Keith Stanley, Chiris Singletary, B. J. Johnson, R. E. Moss, J. T. Nabors, L. R. Kimsey, J. R. Turner, F. Y. Norton Jr., Dexter R. Harris, Tony Hedden, W. M. Anderson, K. E. Sellers, R. Coates, K. L. Ashley, R. McMurtury, R. M. Prince Jr., T. D. Sparks, Isaiah Gray, R. E. Brownlee, R. B. Freeman, and Simeon L. Spearman.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful actions taken against the following employees and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that these actions will not be used against them in any way:

Larry Davis, Wendel Ferguson, Charles Cullen, David Bell, John Pat Brown, Willie Cole, Geo. Van Johnson, Andy Bannister, David Belton, Clarence Morton, John McPhall, Eddie Cunninham, Charlie Ramey, Douglas McCall, David Crawford, Walter Wilson, Vester Gable, Charles Willis, Bradley McCord, Marshall Brown, Wm. Riley Jr., Proctor Ashley, Jesse Johnson, Johnny K. Slay, J. R. Kimsey Jr., Albert Hagen, Walter Garner, Bruce Winn, Wm. McCall, Ira Latham, Franklin Page, Charles Kirkland, Samuel Fleming, James Belcher, Charles McGee, Robert Hughes, Bobby Fortescue, Lawyer Cowan, James A. Riley, David Land, Ronald T. Page, Samuel T. Clinkscales, C. W. Sutherland, T. M. Bradberry, L. T. Partridge, Emory Morton, Jimmy Loftis, J. H. Wilson III, J. M. Henderson, J. A. Laster Jr., Horace Rollinson, R. C. Clinkscales, Raymond Durant, Howard Gray, John S. Aiken, Robert L. Franklin, C. W. Wilson Sr., C. Johnny Moss, C. W. Wilson Jr., Howard Akien, A. Killingsworth, R. Ferguson, Randy C. Gable, Stanley Chiles, W. E. Latham Jr., M. D. Taylor Jr., John T. Bell, Oscar E. Burton, Ben E. Hunter, Wallace Spencer, Tim P. Dove, Aubry D. Cheek, R. E. Burton Jr., Stuart Baskin, James T. Cannady, Phillip R. Manley, B. A. Perrin, H. L. Bailey, M. R. Enwright, J. V. Ashley, R. V. Brown, James P. McCord, S. E. Crawford, Lonnie E. Thomas, E. J. Crabb Jr., Wm. R. Cheek, J. T. Tollison, W. Killingsworth, J. W. Ferguson Jr., J. E. McCurry, Charles W. Link, Eugene Tatum, S. E. McDuffie, Dennis R. Scott, E. D. Warren, J. L. Crawford, Herman L. Price, Edwin T. Hannah, K. R. Culbreth, Rickey Gibson, C. D. Kilgore Jr., Chris Morton, Ben Williams, Moses Mattison, Larry C. Gray, Odis Walton, G. M. Williams, J. H. Sutherland, C. E. Tinch, M. Jackson Jr., J. B. Ferguson, E. R. Morton Jr., Curtis Siebert, E. V. Gray, M. A. Hagen, J. W. Pauul, N. McNair, B. L. Paul, Michael Childs, B. J. Coleman, Wesley Gibson, J. M. McDonald, Stanley G. Murray, Melvin K. Bonds, W. D. Sparks, G. M. Ellis, J. O. Oliver Jr., Melvin E. Ashley, J. O. Coleman, S. E. Brownlee, C. C. Brown, R. F. Donaldson, R. R. Simpson, Keith Stanley, Chiris Singletary, B. J. Johnson, R. E. Moss, J. T. Nabors, L. R. Kimsey, J. R. Turner, F. Y. Norton Jr., Dexter R. Harris, Tony Hedden, W. M. Anderson, K. E. Sellers, R. Coates, K. L. Ashley, R. McMurtury, R. M. Prince Jr., T. D. Sparks, Isaiah Gray, R. E. Brownlee, R. B. Freeman, and Simeon L. Spearman.

WE WILL recognize and, on request, bargain with International Brotherhood of Electrical Workers, Local Union 2236, AFL–CIO, CLC as the exclusive collective-bargaining representative of our employees in the appropriate unit, concerning their terms and conditions of employment, WE WILL furnish the Union with information it requested which is necessary to its role as the collective-bargaining representative of the unit employees, and WE WILL process grievances.

WE WILL, on request of the Union, rescind any or all unilateral changes we made to the terms and conditions of employment of our employees in the appropriate unit, WE WILL restore the terms and conditions of employment that previously existed until we have negotiated in good faith with the Union to agreement or impasse, and WE WILL make our employees whole for any loss of wages or other benefits incurred by them as a result of these unilateral changes, with interest. Nothing herein shall require us to rescind any increases or improvements in wages or benefits, or to rescind new or additional benefits granted, without a request from the Union.

PIRELLI CABLE CORPORATION

Donald R. Gattalaro, Esq., for the General Counsel.
Richard J. Morgan, Esq., of Columbia, South Carolina, for the Respondent.
Sue D. Gunter, Esq. (Sherman, Dunn, Cohen, Leifer & Yellig, P.C.), of Washington, D.C., for the Charging Party.

DECISION

STATEMENT OF THE CASE

LAWRENCE W. CULLEN, Administrative Law Judge. This case was heard before me on July 17, 18, and 19, 1995, in Laurens, South Carolina, pursuant to a consolidated complaint issued by the Regional Director for Region 11 of the National Labor Relations Board (the Board) on April 23, 1995, in Cases 11–CA–15987, 11–CA–16121, 11–CA–16149, 11–CA–16300, 11–CA–16365, 11–CA–16475, and 11–CA–16536. The complaint is based on charges filed by the International Brotherhood of Electrical Workers, Local 2236, AFL–CIO, CLC (the Union) and by H. Dean Simpson, an individual. The complaint alleges that Pirelli Cable Corporation (the Respondent or the Company) violated Section 8(a)(1) of the National Labor Relations Act (the Act) by unlawfully threatening its employees with the loss of their jobs if they exercised their Section 7 right to strike, that Respondent violated Section 8(a)(3) and (1) of the Act by failing to reinstate its employees on their unconditional offer to return to work following their engagement in an unfair labor practice strike against the Respondent, that Respondent violated Section 8(a)(3) and (1) of the Act (assuming arguendo that the strike was an economic strike) by unlawfully discriminating against its employees by failing to recall them in accordance with their *Laidlaw* rights and the parties' strike settlement agreement, and that Respondent violated Section 8(a)(5) and (1) of the Act by unlawfully withdrawing recognition from the Union, by unlawfully refusing to process grievances, by unlawfully refusing to provide the Union with information relevant and necessary to its collective-bargaining duties and by unlawfully making unilateral changes in its

employees' terms and conditions of employment and committed violations of Section 8(a)(1) of the Act. The Respondent has, by its answer filed on July 5, 1995, denied the commission of any violations of the Act.

On the entire record in this proceeding, including my observations of the witnesses who testified here, and after due consideration of the briefs filed by the General Counsel, the Charging Party Union, and the Respondent, I make the following[1]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. JURISDICTION

A. *The Business of Respondent*

The complaint alleges, Respondent admits, and I find that Respondent was and has been at times material a Delaware corporation with a facility located at Abbeville, South Carolina, where it is engaged in the manufacture of power distribution cables, that during the 12-month period preceding the filing of the complaint, a representative period, Respondent purchased and received at its Abbeville, South Carolina facility goods and materials valued in excess of $50,000 directly from points outside the State of South Carolina, and sold and shipped from its Abbeville facility products valued in excess of $50,000 directly to points outside the State of South Carolina, and Respondent is now, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

B. *The Labor Organization*

The complaint alleges, Respondent admits, and I find that the Union is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

C. *The Appropriate Unit*

The complaint alleges, Respondent admits, and I find that at all times material the following employees of Respondent constituted a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All production and maintenance employees, including shipping and receiving employees, inspectors, and leadmen employed by the Respondent at its Abbeville, South Carolina, plant and warehouses, but excluding office clerical employees, professional employees, casual employees, guards, janitors, and supervisors as defined in the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES[2]

A. *Background*

The Union has been recognized as the exclusive collective-bargaining representative of the employees in the above appropriate unit since 1967. This recognition has been embodied in successive collective-bargaining agreements between the Union and the Respondent, the most recent of which was effective by its terms for the period May 6, 1991, to May 2, 1994.

On March 15, 1994, the parties commenced negotiations for a successor labor agreement to the one which would expire on May 2, 1994. According to the testimony at the hearing, negotiations were difficult with the parties far apart on several issues. The General Counsel and the Charging Party contend that Respondent had a management change in the person of its new plant manager, Reginald Kelley, and that the Company's negotiator, Scott Janoch, its manager of labor relations, took a hard line position on behalf of the Company. IBEW International Representative Han Massey and Local Union 2236 President David Land testified that matters were tense between the parties and that the Company removed the vegetation from its fences in order to ensure greater visibility in its plant area, paraded law enforcement personnel through the plant, and hired armed guards to patrol the perimeter of its facility thereby creating a penal facility atmosphere. These actions are not alleged as violations of the Act in this proceeding. For its part Respondent's witnesses, Kelley and Janoch, testified that matters were tense with the union representatives and the unit employees espousing and predicting the inevitability of a strike against the Company by the unit employees. Respondent's witnesses, Kelley and Janoch, testified that Respondent's management was concerned about the sentiments expressed by the union representatives and the employees that a strike was inevitable and encouraged the representatives and employees to continue negotiations. According to Janoch, to this end Stephen S. Ford, the Company's director of industrial operations, drafted a letter to employees expressing concern over this perceived attitude and urged continued negotiations. However, attached to the letter was a list of questions and answers concerning a possible strike including the following:

> 4. Q. If I go out on strike, can I lose my job?
>
> A. Yes. The Company can continue operating the plant, and can hire strike replacements. If you strike in an attempt to force the Company to agree to the Union's economic demands or to force the Company to withdraw its economic demands, the Company may permanently replace you. When the strike ends you would not have a job if you had been permanently replaced.

On April 20, 1994, during a negotiating session Janoch showed the draft of the letter and the questions and answers attached thereto to the union negotiators who objected to it being sent to the employees. According to Janoch's testimony he asked the union officials to review the letter but they refused to consider it. He conceded on cross-examination that he did not offer to make changes. The letter was sent to the employees on or about that date.

The Respondent presented a final offer to the Union on April 29, which the Union's bargaining committee presented to the employees at a meeting attended by 200 employees held on May 1 and which was rejected by of the employees in attendance. Massey, Land, and bargaining committee member Ernest Warren testified that at the meeting the employees were angry about the letter and authorized a strike but directed the bargaining committee to go back and attempt

[1] The Charging Party's unopposed motion to correct the transcript is granted and the corrections are designated as ALJ Exh. 1 and received and attached to this decision.

[2] The following includes a composite of the credited testimony of the witnesses at the hearing.

to bargain further with the Company. At the union membership meeting, Land discussed three unfair labor practices charges filed against the Respondent including the threat of job loss in the April 20 letter and told the over 200 employees at the meeting that, "We felt strong about our charges and we felt like what they were doing wasn't right and that we should go out and try to get them corrected." The employees voted 171 to 18 to go on strike. Massey testified he explained the difference between an economic strike and an unfair labor practice strike to the employees at the meetings and told them he believed this would be an unfair labor practice strike. He told the employees at the meetings that he thought that the unfair labor practice charges which had been previously filed, including the alleged threat made by the Respondent by sending the letter, were "solid." Warren testified that he told employees that he thought that the unfair labor practice charges were meritorious also. The Company revised its final proposal and the Union agreed to present it to the employees as the Company's final offer and did so on May 5, when the membership rejected this proposal.

The Union then called a strike on May 5 and the strike lasted until June 20 when Land presented a letter to Janoch in which the Union made an unconditional offer of a return to work on behalf of the strikers. During the strike period a number of employees in the unit crossed the picket line and returned to work. The Company also hired replacement workers and utilized salaried personnel and other nonunit personnel to maintain its operations. When the Union made the offer on behalf of the employees, the Company took the position that all the jobs were filled and that the employees were only entitled to be placed on a preferential hire list as economic strikers. The parties signed a return-to-work agreement on behalf of the employees providing that striking workers would be permitted to return to work by being placed on a preferential hire list. The agreement provided that all employees who had remained on strike until June 20 would be placed in the order of their seniority, on a preferential hire list, behind eight employees who had previously made an offer to return to work but had not yet been returned to work by the Company. The agreement further provided that "As openings occur employees shall be returned in the order of their placement on that list and in accordance with their qualifications to perform the work available."

The record in this case is replete with testimony and records showing that the Respondent treated the employees as economic strikers rather than as unfair labor practices strikers who would have been entitled to immediate reinstatement to their former positions on their offer to return to work. Additionally the record shows that after the return to work agreement was entered into, the Respondent filled openings within its plant by permitting replacement workers and others on the job to bid into these openings rather than utilizing the seniority of the strikers who were on the preferential hire list to permit them to bid into these positions and that when the Company was unable to fill the openings from active employees on the job, it simply withdrew the openings and did not fill them.

Additionally, the Company relying on alleged rumors in the small town of Abbeville that some of the strikers on the preferential hire list had obtained other jobs, terminated employees John Wilson and Samuel Fleming unilaterally without contacting them and ascertaining whether they had in fact obtained substantially equivalent employment such as to justify their removal from the preferential hire list. I credit Wilson and Fleming's testimony that they were willing to return to work. After the cessation of the strike the Respondent made several unilateral changes in the terms and conditions of employment of the employees.

On June 22 and 23 a petition to decertify the Union was circulated by several employees and signed by less than a majority of the employees who were in the original unit at the time of the strike. The petition was presented to the Respondent at that time. On August 1, Respondent withdrew recognition from the Union and has since refused to furnish relevant information necessary for bargaining and the processing of grievances and has refused to process grievances and has also implemented numerous unilateral charges in employment of employees in the unit.

FACTS AND ANALYSIS

The strike

Initially, I find that the strike by the Union on May 5 was an unfair labor practice strike as I find that the question and answer concerning the loss of their jobs by the strikers was an unlawful threat and that Respondent thereby violated Section 8(a)(1) of the Act. The Board has held that a statement by an employer that employees will be permanently replaced is lawful even in the absence of a statement advising the employees of their rights under *Laidlaw Corp.*, 171 NLRB 1366 (1968), enfd. 414 F.2d 99 (7th Cir. 1979), to be placed on a preferential hire list *Eagle Comtronics*, 263 NLRB 515, 516 (1983). However, if an employer goes further than this and tells employees that they may lose their jobs if they go on strike without an explanation to the employees of their *Laidlaw* rights to be placed on a preferential hire list, the statement that they may lose their jobs will be held unlawful as such a statement conveys an inaccurate message and ignores the fact that economic strikers remain employees under the Act even though they have been permanently replaced. See *Larson Tool & Stamping Co.*, 296 NLRB 895 (1989); *Baddour, Inc.*, 303 NLRB 275, 279, 280 (1991). See also *Hampton Inn*, 309 NLRB 942 (1992); and *Casa Duramax, Inc.*, 307 NLRB 213 fn. 1 (1992). In the instant case, the Respondent clearly informed the employees that they could lose their jobs without informing them of their right to be placed on a preferential hire list. This is the same type of statement found unlawful in *Baddour* and it was inherently coercive of the employees' rights under Section 7 of the Act. The Respondent contends that the letter was not a contributing cause of the strike. However, I credit the unrebutted testimony of Massey, Land, and Warren that the employees were angry about the threat of job loss in the letter. I find that this was a contributing cause of the strike in addition to economic issues. Massey testified that he and some of the strikers made up signs citing the unfair labor practice of Respondent as a reason for the strike, which signs were carried by the striking employees. It is well settled that the unfair labor practice contributing to a strike need not be the only contributing factor or even the dominant factor contributing to the strike in order to establish that it was an unfair labor practice strike. See *Storer Communications*, 294 NLRB 1056, 1056 fn. 4 (1989); *Massachusetts Coastal Seafoods*, 293 NLRB 496, 498 (1989); and *Gas Springs Co.*, 296 NLRB 84, 99 (1989).

Having thus found that the strike was an unfair labor practice strike, I conclude that Respondent's failure to immediately reinstate the following strikers on their unconditional offer to return to work was a violation of Section 8(a)(3) and (1) of the Act [asterisked * employees were reinstated on the date known to the Respondent]:

Larry Davis	Wendel Ferguson
Charles Cullen	David Bell
John Pat Brown	Willie Cole
Geo. Van Johnson	Andy Bannister
David Belton	Clarence Morton*
John McPhall	Eddie Cunninham
Charlie Ramey	Douglas McCall
David Crawford	Walter Wilson*
Vester Gable	Charles Willis
Bradley McCord	Marshall Brown
Wm. Riley Jr.	Proctor Ashley
Jesse Johnson	Johnny K. Slay
J. R. Kimsey Jr.	Albert Hagen
Walter Garner	Bruce Winn
Wm. McCall	Ira Latham
Franklin Page	Charles Kirkland
Samuel Fleming	James Belcher
Charles McGee	Robert Hughes
Bobby Fortescue	Lawyer Cowan
James A. Riley	David Land
Ronald T. Page*	Sam Clinkscales
C. W. Sutherland	T. M. Bradberry*
L. T. Partridge*	Emory Morton
Jimmy Loftis	J. H. Wilson III
J. M. Henderson*	J. A. Laster Jr.
Horace Rollinson	R. C. Clinkscales
Raymond Durant*	Howard Gray
John S. Aiken	Robert L. Franklin
C. W. Wilson Sr.	C. Johnny Moss
C. W. Wilson Jr.	Howard Akien
A. Killingsworth	R. Ferguson
Randy C. Gable	Stanley Chiles
W. E. Latham Jr.	M. D. Taylor Jr.
John T. Bell	Oscar E. Burton
Ben E. Hunter*	Wallace Spencer
Tim P. Dove	Aubry D. Cheek
R. E. Burton Jr.*	Stuart Baskin
James T. Cannady	Phillip R. Manley
B. A. Perrin	H. L. Bailey
M. R. Enwright	J. V. Ashley
R. V. Brown	James P. McCord
S. E. Crawford	Lonnie E. Thomas
E. J. Crabb Jr.	Wm. R. Cheek
J. T. Tollison	W. Killingsworth*
J. W. Ferguson Jr.*	J. E. McCurry
Charles W. Link	Eugene Tatum
S. E. McDuffie	Dennis R. Scott
E. D. Warren	J. L. Crawford
Herman L. Price	Edwin T. Hannah
K. R. Culbreth	Rickey Gibson
C. D. Kilgore Jr.	Chris Morton
Ben Williams	Moses Mattison
Larry C. Gray	Odis Walton
G. M. Williams	J. H. Sutherland
C. E. Tinch	M. Jackson Jr.
J. B. Ferguson	E. Morton Jr.
Curtis Siebert	E. V. Gray
M. A. Hagen*	J. W. Paul*
N. McNair	B. L. Paul
Michael Childs*	B. J. Coleman
Wesley Gibson	J. M. McDonald
Stanley G. Murray	Melvin K. Bonds
Melvin K. Bonds	W. D. Sparks
G. M. Ellis	J. O. Oliver Jr.
Melvin E. Ashley	J. O. Coleman
S. E. Brownlee	C. C. Brown
R. F. Donaldson	R. R. Simpson
Keith Stanley	Chiris Singletary
B. J. Johnson	R. E. Moss
J. T. Nabors	L. R. Kimsey
J. R. Turner	F. Y. Norton Jr.
Dexter R. Harris	Tony Hedden*
W. M. Anderson	K. E. Sellers
R. Coates	K. L. Ashley
R. McMurtury	R. M. Prince Jr.
T. D. Sparks	Isaiah Gray
R. E. Brownlee	R. B. Freeman
Simeon L. Spearman*	

The failure to afford the strikers their *Laidlaw* rights

Assuming arguendo that the Board finds the strike was an economic strike and not an unfair labor practice strike, I find that the Respondent violated Section 8(a)(3) and (1) of the Act by its failure to afford the strikers their *Laidlaw* rights. The record in this case clearly establishes that the Respondent undertook an unlawful scheme to frustrate the *Laidlaw* rights of the strikers and to prevent their return and to ultimately rid itself of the Union and as many union adherents as possible. I find that the Respondent violated Section 8(a)(1) of the Act by its insistence that the parties sign the return-to-work agreement which placed strikers who had made an offer to return to work prior to the strike but who had not yet been reinstated ahead of the other strikers on whose behalf the Union made the unconditional offer of a return to work on June 20.

Initially, I find that the return-to-work agreement clearly states that the strikers will be returned to work as openings occur. However, the Respondent did not comply with the agreement by reinstating the strikers as the replacement employees left or were terminated. Rather, the Respondent posted the vacated jobs for internal bid by the replacement workers or combined jobs and reduced its employee complement. Strikers were not permitted to bid on the jobs. When the Respondent was unable to fill the jobs by internal bidding, Respondent simply withdrew them and sometimes reposted them in another attempt to fill the jobs internally rather than recall strikers on the preferential hire list. When Land and Warren protested the bypassing of the strikers on the preferential hire list to Plant Manager Kelley in June, Kelley told them he did not understand the return-to-work agreement to require Respondent to reinstate the strikers to the open positions and said that the strikers had no rights and that only jobs that were not filled would be awarded to the strikers. In practice, as noted above, the Respondent did not even do this but rather combined jobs and reduced its employee complement rather than recall strikers. No strikers were recalled until August. In the interim, the Respondent took whatever steps to fill vacancies that it deemed appropriate ostensibly

relying on the preexisting labor agreement and its last and final offer which it had implemented after the rejection of the offer by the union membership on May 5. The Union was not consulted with respect to any of the job postings and employees on the *Laidlaw* preferential hire list were not permitted to bid on any jobs that came open as they were not allowed in the plant where open jobs were posted and thus were not apprised of the openings and were unable to bid on jobs as employees bidding on jobs were required to make their bids in writing within the plant.

General Counsel's Exhibit 34 shows that 68 jobs were posted for bid between June 20, 1994, and April 10, 1995. Raymond Durant, a striker who was recalled in August 1994, testified that under the established procedure job bids were posted on the bulletin board in the plant. When he returned in August, he observed several jobs posted between September and October 1994. They were the jobs of wire drawer, strander, server, supply jobs, CV, and a plant auditor job. The supply job and the plant auditor's job were filled and the other jobs which had not been filled were removed from the bulletin board and those jobs were reposted in either October or November. These jobs were not filled after they were reposted. In January 1995 five wire drawer jobs were posted and subsequently reposted in mid-January and again in February and were not filled. Additionally in February a server and a strander job were posted and were not filled. Durant testified further that after he returned to work he observed Bo Simpson, an engineer, and Supervisors Kim Vaughn and Ronnie Bosler performing maintenance work, which is undisputably bargaining unit work. He observed Simpson fix tow motors and Bosler fix machines on three or four occasions and Vaughn fix machines on four or five occasions which was the work of unit included maintenance men.

Robert Stewart, a replacement employee, testified that he had been employed from 1985 to 1988 when he was terminated by Respondent. He was asked to come back by Supervisors George Guy and Mike Graham after the strike and agreed to do so. He did not receive a job title on his return and was used to train other employees "on a lot of different jobs." He testified to the past practice with regard to bidding on jobs. "To my knowledge, basically you bid on a job and the best clock number (person with the greatest seniority) that bids on the job is awarded the job, other than maintenance. Maintenance, the person with the best clock number, that passes the test, is awarded the job." He did not bid on any jobs but he was awarded a No. 4 CV job after it was posted and the job was not filled and Willene Driggers, then secretary to Plant Manager Kelley, told him he "had to take some job, whatever was left and she tells me I could have No. 4 CV if it was all right with Mr. Kelley and she came back the next day and said it was fine. But I didn't bid on it. Nobody bid on it and it come off the board." This occurred in December 1994. He quit his employment 2 weeks later. After the strike he saw supervisors performing unit work. In June 1994 he ran one of two "spark and patch" machines and Supervisor Ron (Bosler) ran the other one. He saw Supervisor George Guy repairing cable on the No. 5 jacket line on several occasions in June and July. He saw Supervisor Vaughn working on a PIV unit on the 18 wire server in October 1994 and Supervisor Bosler working PIV on the No. 24 wire server in October 1994.

Stewart testified further that he attended a meeting held by Plant Manager Kelley in June 1994 at which Kelley told the replacement workers and some others that had returned from the strike "that there was a Milliken plant in South Carolina that was—they voted to unionize the plant and Roger Milliken closed down the plant and he kept it tied up in court so long that he eventually had to pay some of the grand-kids because the people had died. Kelley told us that he could assure us that Pirelli would do the same thing." Stewart testified about another meeting at which Janoch had spoken and told the employees that they were still operating under the old contract but they could form their own union if they wanted to but "what could we do but go on strike." Stewart testified further that in September 1994 that Supervisor Jerry Stone told him employee Butch Busby, who had returned from medical leave, had filed a grievance against a supervisor working and that the Respondent had torn it up.

Dean Simpson, a 14-year employee at the time of the hearing, who was a No. 3 CV leadman at the time of the strike and who did not join the strike, testified concerning events after the employees went out on strike. Prior to the strike there was one operator on the No.3 CV machine and one operator on the 4 CV machine and a leadman and a helper on the Nos. 2, 3, and 4 CV. A few days after the strike began the Company posted a notice stating that the plant was operating under the terms of the Company's final proposal to the Union. A number of jobs were also posted for bid. Employee Frank Knox who was then a No. 3 CV operator on the first shift, bid on a dye shop job on the first shift. Simpson, who was then the operator of the No. 3 CV on the second shift, chose the first shift to run this machine. When Knox was moved to the dye job, management told Simpson, they wanted him to stay on the second shift as there was no leadman on the second shift and employee Billy Ware was being trained on the first shift which had a leadman. A week later Supervisor Ron Sink told Simpson that Knox had been disqualified from the dye job and was returning to his job as a CV operator on the first shift and that Simpson would have to remain on the second shift. Ware, who had not bid on the job, was assigned to the No. 4 CV which was a week late for the start of the 12-hour shift which the Company was implementing at the time. Simpson complained to Plant Manager Kelley about this and Kelley agreed that he should have been awarded the first shift job, but told him that Knox had health problems on the dye job and he had to move him back and that he would try to find Simpson a first-shift job. Simpson told Kelley that Knox should have been moved to other open jobs as under the past practice employees, who are disqualified on a job on which they have bid, do not return to their old job if it has been bid on, but must go to any open job and only if there were no open jobs, could he have exercised his seniority to bump Simpson off the first-shift job. He also complained to then Human Resources Manager Jim Dulaney and asked him several times why management did not bring back first and third-shift leadmen and requested that they bring back Stanley Murray who had been the third-shift leadman. Dulaney told him that management had decided not to bring Murray back. Subsequently at an open meeting at which both Dulaney and Janoch were present, Simpson asked them to bring back leadman Robert Burton, and he was returned to work on August 22, 1994. Simpson testified further that in

July 1995 the Company eliminated the helpers on the CV machines and combined the Nos. 3 and 4 CV jobs and that at the time of the hearing there was one operator on each of the machines and a leadman on the second shift with no supervisor. Consequently, on production changes that require three persons to start a machine, the other machine is left idle as a result of the reduction in manpower. Prior to the strike there were three 8-hour shifts. Prior to Easter of 1995 the Company eliminated the third shift and instituted two 12-hour shifts and the employees on the third shift were put on the 12-hour shift. On April 1995, the Company instituted a new insurance plan.

Katherine Thompson-Hanlon, a CV operator who had served as the secretary for the Union as well as a union steward and as a member of the union bargaining committee in the 1994 contract negotiations, testified that she returned from the strike in early June. In September 1994 she inquired of Kelley why Union Vice President Warren and Union Financial Officer Tollison had not been recalled for operator positions which were open as they were the next employees to be recalled in order of seniority and that Kelley told her they were not going to be recalled. She also testified that the Respondent denied her selection of individual days of vacation and voided her swap of shift selection with another employee both of which constituted changes in the past practice of the parties. I also credit the testimony of Land concerning the past practice with regard to permitting both vacation selection and shift selection.

On October 27, 1994, Willene Driggers who was then acting as the human relations manager following the departure of Dulaney in August, addressed a memo to all management employees in regard to filling vacancies from the preferential hire list. In the memo she states in pertinent part, "As you all know we are currently involved in litigation with IBEW on the issue of recognizing the Union. Our defense in this case will include an analysis of those on the preferential hire list and the role they would play in a decertification vote." She further stated in her memo, "This same type of analysis is being done when vacancies occur, and we have to make a decision on who to recall from the list. We will not always understand the choices we will have to make but rest assured we are acting on the best legal advice available."

I thus find that the Respondent violated Section 8(a)(3) and (1) of the Act by its failure and refusal to reinstate employees in accordance with their seniority as set out on the preferential hire list as openings occurred. In this regard, the record in this case amply demonstrates that the Respondent engaged in a number of actions designed to defeat and frustrate the reinstatement rights of the strikers, such as the unilateral termination of Fleming and Wilson, the bypassing of Ferguson (discussed, infra), the reduction of its employee complement and the absence of evidence accounting for this reduction as a result of business necessity, the performance of unit work by supervisors, and the combining of jobs and the use of internal bidding to fill jobs rather than recall the strikers. In addition comments to employees by Plant Manager Kelley that the Respondent would drag this matter out so long that any backpay would be made to the grandchildren of the former strikers on the rehire list were violative of Section 8(a)(1) of the Act. In addition the statement by management official that three union officials would not be recalled because of their participation in the strike and then acting Human Resources Manager Driggers that strikers would be recalled by methods based on how their recall would affect the decertification petition all convince me, and I find that the Respondent engaged in the aforesaid conduct in order to punish the former strikers for their participation in the strike and to defeat their *Laidlaw* rights with the ultimate goal to rid itself of the Union and its supporters and that Respondent thereby violated Section 8(a)(1) and (3) of the Act as it has failed to demonstrate that its failure and refusal to offer reinstatement to the former strikers was based on "legitimate and substantial business justifications" *NLRB v. Great Dane Trailers*, 388 U.S. 26 (1967); *NLRB v. Fleetwood Trailer Co.*, 389 U.S. 375 (1967). See *Carter-Glogau Laboratories*, 280 NLRB 447 (1986), and cases cited in that decision holding that an employer may not place conditions (such as the receipt of a letter from the employees indicating their interest in reinstatement as occurred in this case) on economic strikers *Laidlaw* rights of recall. See *Medite of New Mexico, Inc.*, 314 NLRB 1145 (1994); *Outboard Marine Corp.*, 307 NLRB 1333, 1344–1345 (1992), enfd. 9 F.3d 113 (7th Cir. 1993); *Alaska Pulp Corp.*, 296 NLRB 1260 (1989), and *MCC Pacific Valves*, 244 NLRB 931 (1979), and *Textron, Inc.*, 257 NLRB 1, 6 (1981), regarding the posting of jobs for internal bid in order to relegate the former strikers to low level or least desirable jobs.

Alleged discrimination against specific employees

It is undisputed that in October 1994, Respondent recalled CV operator Milton Hagen instead of Ricky Ferguson who was the most senior CV operator on the preferential hire list. Ferguson testified he called Willeen Driggers (who was then serving as the Acting Human Resources Manager) and asked her why he had not been recalled and she said, "they was going by the law, and she couldn't understand it, but that's the way it was." Ferguson testified he had never informed Respondent, he would not accept reinstatement but rather told Respondent's officials that he would return to work if he were recalled. I credit Ferguson's unrebutted testimony as set out above and find that Respondent violated Section 8(a)(3) and (1) of the Act by its failure to recall Ferguson.

On May 5, 1995, Respondent terminated employees Samuel Fleming and John H. Wilson III, ostensibly on the grounds that it had heard rumors in the small town of Abbeville, South Carolina, that they had secured other employment. Fleming had obtained another job and Wilson had opened up a gas station with his wife. However, Respondent bears the burden of proof of demonstrating that these positions were regular and substantially equivalent to their former positions with Respondent so as to justify the terminations. Respondent wholly failed to do so. Rather the unrebutted testimony of Fleming and Wilson which I credit demonstrated that their new positions were not substantially equivalent to their former positions with Respondent. Although both Fleming and Wilson had been employed as electronic technicians by Respondent for many years and Respondent had vacancies for electronic technicians, it failed to recall them and discharged them by its letter of May 5, 1995. Fleming testified that in his new position, he works the night shift rather than the day shift he worked for Respondent and averages only 8 hours of overtime per week whereas he worked 16 hours of overtime for Respondent and pays double the amount for health insurance he paid while employed

by Respondent, and at the time of the hearing be was not yet eligible for participation in a pension plan at his new place of employment whereas he participated in Respondent's pension plan. Wilson testified he did not earn as much at his new business as he had at Respondent. Neither Fleming nor Wilson had ever informed Respondent that they would refuse an offer to return to work if it were made. Accordingly, I find that Respondent violated Section 8(a)(3) and (1) of the Act by its discharge of Fleming and Wilson. *Marchese Metal Industries*, 313 NLRB 1022 (1994); *Rose Printing Co.*, 304 NLRB 1076 (1991).

It is also undisputed that Respondent failed to reinstate striker William Riley Jr. as it failed to recall him to fill a die control job it posted for bid on March 9, 1995, although he was the most senior die control employee on the preferential hire list. (G.C. Exhs. 9 and 17.) I accordingly find that Respondent violated Section 8(a)(3) and (1) of the Act by its failure to reinstate Riley to the die control job.

The case of James McCord

At the time of the strike 15-year employee James McCord was off work as a result of an on the job injury to his foot which he had sustained on December 5, 1993, and did not join the strike as he was already off work receiving workmen's compensation benefits. On May 18 then Human Resources Manager James Dulaney sent him a certified letter ordering him to return to work. The letter stated that Respondent's records showed he was available for "light duty assignment" and that he had not presented himself for work indicating he had abandoned the strike called by the union on May 5, 1994, and that as of May 18, Respondent considered him to be on strike and in the event he questioned this determination he was to report to Dulaney within 24 hours of receipt of the letter. McCord went to the office and met with Dulaney the same day he received the letter and asked Dulaney what job he would be assigned to and Dulaney told him it would be in the die shop. McCord told Dulaney he could not work in the die shop as Respondent's safety policy required him to wear a safety shoe and he was unable to do so as he was wearing a wooden orthopedic shoe at the time. At that time Dulaney threw up his hands and "sarcastically" said he could use him in the office. McCord told Dulaney he could not come in because he could not wear the proper safety shoe. Subsequently in June, McCord learned that Dulaney had declared him on strike and had canceled his insurance including health insurance. He filed a grievance concerning these actions and it was presented on his behalf by Union President Land at a meeting attended after the strike by Dulaney, Land, and McCord. Dulaney told them to put the first-step grievance in writing which was unusual but they subsequently learned in the meeting that Dulaney was leaving the Company. The grievance was denied at the first step and has never been processed further as the Respondent withdrew recognition from the Union and no longer permits Land to act on behalf of the employees. McCord testified he did not go out on strike, but the Company refused to permit him to return after he was temporarily released to return to work. McCord took the release out to Driggers, who was then serving as human resources manager after the strike, and she told him he was classified as a striker and was on the preferential hire list. As of the date of the hearing McCord testified he was still out on workmen's compensation and was due to have another operation on his foot the next day. He had signed up for the preferential hire list as he was told to do so by Dulaney.

I credit the unrebutted testimony of McCord as Dulaney did not testify and Driggers did not deny any of this testimony by McCord, and find that Respondent violated Section 8(a)(3), (5), and (1) by its treatment of McCord as a striker rather than permitting him to remain on workmen's compensation and by its cancellation of his insurance benefits and by its refusal to permit him to return to work after he was temporarily released to return to work and that Respondent violated Section 8(a)(5) and (1) of the Act by its refusal to process his grievance.

The withdrawal of recognition

Consequently, I find that Respondent was not entitled to rely on the decertification petition to establish a good-faith doubt of a loss of majority by the Union as a basis for withdrawing recognition from the Union, as the withdrawal did not occur in the absence of unfair labor practices. Rather the evidence supports a finding that the petition is deficient on its face as it was signed by less than a majority of the original employees in the unit at the time of the strike and Respondent clearly unlawfully orchestrated the size of the unit with its denial of the *Laidlaw* rights of the strikers and its reduction of its employee complement.

Consequently the Respondent's withdrawal of recognition, refusal to furnish information, and institution of numerous unilateral changes were all violative of Section 8(a)(5) of the Act.

It is undisputed that the Respondent withdrew recognition from the Union on August 1, 1994. On August 1, 1994, Union President David Land met with then Manager of Human Resources James Dulaney concerning grievances and requested information to determine whether Respondent was complying with the return-to-work agreement of June 20. At that time Dulaney told Land he was leaving the Company. Dulaney did not furnish the requested copies of letters which the Respondent had unilaterally sent to employees on the hire list seeking their response in writing as to whether they intended to return to work and their present job status, some of which had been returned to Respondent by the employees. Dulaney did not give the information to Land and Land went to see Driggers (the secretary to Plant Manager Kelley) to request the information. Driggers stepped into Kelley's office briefly and then told Land that Kelly had said that Respondent did not need to furnish the information to the Union as Respondent was no longer recognizing the Union. This was confirmed in writing by the Respondent's letter of August 2, 1994, which was sent to the Union withdrawing recognition. Since the withdrawal of recognition the Respondent has made numerous unilateral changes in the terms and conditions of employment of the unit employees. The Respondent at the hearing and in brief contended that the withdrawal of recognition was based on a good-faith doubt of a loss of majority as a result of a decertification petition it received from an employee in June 1994 and also based on certain employees not engaging in the strike, some employees returning to work during the strike, some employees withdrawing their dues authorizations, and some employees obtaining other employment and the hiring of replacement workers.

I find that Respondent violated Section 8(a)(5) and (1) of the Act by its withdrawal of recognition from the Union and by its undisputed implementation of the following unilateral changes in the terms and conditions of employment of the unit employees as follows:

(a) Changing its job bid procedure.
(b) Implementation of a fourth shift.
(c) Breaching the strike settlement agreement.
(d) Assigning supervisors bargaining unit work.
(e) Raising the wages of leadmen.
(f) Changing its practices regarding vacation requests and granting of vacation days.
(g) Breaching its shift swap agreement.
(h) Changing the wage rate and job requirements for die control employees.
(i) Changing its attendance policy by changing the point value for failure to call in when absent, changing the number of allowable medical excuses in a rolling year, changing the perfect attendance system, and assigning additional benefits thereto and changing the call-in procedure.

The Respondent was not entitled to rely on the decertification petition to establish a good-faith doubt of the majority status of the Union as a basis for withdrawing recognition as the withdrawal did not occur in the absence of unfair labor practices. Rather the petition is tainted by the unremedied unfair labor practice committed by Respondent when it threatened its employees with job loss if they went on strike. *William Enterprises*, 312 NLRB 937, 937 (1993), enfd. 50 F.3d 1280 (4th Cir. 1995); *Detroit Edison Co.*, 310 NLRB 564, 565 (1993). Moreover the petition itself is deficient on its face as it was signed by only 127 employees, clearly less than a majority of the 340 employees in the unit at the time of its receipt by Respondent in June 1994 and Respondent did not verify the signatures, some of which are illegible. Moreover, Respondent's reliance on the other factors cited above to bolster the lack of a majority of signatures on the petition has been rejected by the Board and cannot form the basis for proving a loss of majority. See *Alexander Linn Hospital Assn.*, 288 NLRB 103, 103–108 (1988), enfd. 866 F.2d 632 (3d Cir. 1989); *Curtin Matheson Scientific*, 287 NLRB 350, 352 (1987), enf. 859 F.3d 362 (5th Cir. 1988), revd. and remanded 494 U.S. 775 (1990), enfd. on remand 905 F.2d 871 (5th Cir. 1990), re: lack of participation in a strike or a return to work by employees during a strike not supporting a withdrawal of recognition, and *Kuno Steel Products Corp.*, 252 NLRB 904–905 (1980), enfd. in relevant part *NLRB v. Koenig Iron Works*, 681 F.2d 130 (2d Cir. 1982), re: the Board's rejection of revocation of dues authorizations as a basis of a good-faith doubt of majority.

CONCLUSIONS OF LAW

1. The Respondent is an employer within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The appropriate unit is:

All production and maintenance employees, including shipping and receiving employees, inspectors, and leadmen employed by the Respondent at its Abbeville, South Carolina, plant and warehouses, but excluding office clerical employees, professional employees, casual employees, guards, janitors, and supervisors as defined in the Act.

4. Respondent violated Section 8(a)(1) of the Act by sending the letter to employees stating that they could lose their jobs if they engaged in a strike and failing to advise them of their right to be placed on a preferential hire list in the event that they had been replaced.
5. The strike was an unfair labor practice strike and Respondent violated Section 8(a)(3) and (1) of the Act by failing to immediately reinstate the employees on the unconditional offer to return to work made on their behalf by their union representatives.
6. Assuming arguendo that the strike was an economic strike, Respondent violated Section 8(a)(3) and (1) of the Act by its delay in recalling economic strikers by filling jobs from among replacement employees through a new bidding process established and operated to frustrate and deny the recall rights of the economic strikers and by its withdrawal of job openings if they were not filled from among the replacement employees rather then recalling the former strikers from the rehire list and by combining jobs, having supervisors perform bargaining unit work and by eliminating 20 positions from its employee complement in the absence of proof of business justification for doing so.
7. Assuming arguendo that the strike was an economic strike, Respondent violated Section 8(a)(3) and (1) of the Act by placing employees who had previously made an individual offer of unconditional return but had to yet been recalled on a separate list in priority to the general recall list of strikers on whose behalf the Union had made an unconditional offer of return and by requiring strikers to return a letter sent by Respondent to them which advised of their intention to return to work.
8. Respondent violated Section 8(a)(3) and (1) of the Act by terminating the employment rights of employees Samuel Fleming and John Wilson III.
9. Respondent violated Section 8(a)(1) of the Act by the threat made by Plant Manager Kelley that Respondent would drag this case out and by his statement that Union Officials Warren and Tollison would not be recalled because of their participation in the strike.
10. Respondent violated Section 8(a)(3) and (1) of the Act by its refusal to recall Ricky Ferguson to the die shop job for which he was the senior operator on the preferential hire list and by its failure to reinstate William Riley Jr.
11. Respondent violated Section 8(a)(3) and (5) of the Act by its removal of James McCord from his disability status and the cancellation of his benefits including his health insurance and by refusing to permit him to return to work after he was temporarily released from work.
12. Respondent violated Section 8(a)(5) and (1) of the Act by its withdrawal of recognition from the Union.
13. Respondent violated Section 8(a)(5) and (1) of the Act by its refusal to bargain with the Union and its refusal to furnish information to the Union necessary for collective bargaining.
14. Respondent violated Section 8(a)(5) and (1) of the Act by its refusal to process grievances.

15. Respondent violated Section 8(a)(5) and (11) of the Act by its implementation of the following unilateral changes without affording notice to and opportunity to bargain with the Union:

(a) Changing its job bid procedure.
(b) Implementation of a fourth shift.
(c) Breaching the strike settlement agreement.
(d) Assigning supervisors bargaining unit work.
(e) Raising the wages of leadmen.
(f) Changing its practices regarding vacation requests and granting of vacation days.
(g) Breaching its shift swap agreement.
(h) Changing the wage rate and job requirements for die control employees.
(i) Changing its attendance policy by changing the point value for failure to call in when absent, changing the number of allowable medical excuses in a rolling year, changing the perfect attendance system, and assigning additional benefits thereto and changing the call-in procedure.

16. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in numerous violations of the Act, it will be recommended that Respondent cease and desist therefrom and take certain affirmative actions designed to effectuate the purposes and policies of the Act and post the appropriate notice.

It is recommended that Respondent offer immediate reinstatement to each of the employees who engaged in the strike to their prior positions or to substantially equivalent, ones if their old positions no longer exist, discharging if necessary any replacement employees. The strikers shall be made whole for all loss of backpay and benefits sustained as a result of Respondent's failure and refusal to recall them and the imposition of the unilateral changes with backpay and benefits computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[3]

It is further recommended that Respondent rescind its withdrawal of recognition and recognize and bargain with the Union on request by the Union, and rescind all unilateral changes implemented by it following its withdrawal of recognition from the Union. The Board does not require that employees suffer the loss of increases in wages and/or improvements in benefits or the addition of new benefits under circumstances such as these and I accordingly do not recommend that any increases in wages and improvements in benefits or the addition of new benefits be rescinded. It is further recommended that the Respondent make whole the employees for any loss of benefits and wages suffered because of the changes, with interest.

I further recommend that the Respondent restore the status quo ante prior to the date of its withdrawal of recognition from the Union until the Respondent has on request bargained with the Union and reached agreement or a valid impasse and that the initial date of union certification be treated as beginning on the date this Order is complied with. See *Mid-South Bottling Co.*, 287 NLRB 1333, 1350 (1988), enfd. 876 F.2d 458 (5th Cir. 1989); *R & H Masonry Supply*, 238 NLRB 1044, 1050 (1978), modified 627 F.2d 1013 (9th Cir. 1980). See *Glomac Plastics*, 234 NLRB 1309 fn. 4 (1978), enfd. in pertinent part 592 F.2d 94 (2d Cir. 1979).

I do not recommend the award of litigation expenses to the Charging Party as it has requested as this request lacks merit as Respondent's defenses were not clearly frivolous. *Frontier Hotel & Casino*, 318 NLRB 857 (1995).

[Recommended Order omitted from publication.]

[3] Interest shall be computed at the "short term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.

Donald R. Gattalaro, Esq., for the General Counsel.
Richard J. Morgan, Esq. (McNair & Sanford), of Columbia, South Carolina, for the Respondent.
E. Han Massey, International Representative, of Monroe, South Carolina, for the Charging Party.

DECISION

STATEMENT OF THE CASE

LAWRENCE W. CULLEN, Administrative Law Judge. This case arises as a continuation of issues in Pirelli Cable Corporation, Cases 11–CA–15987, et al. (*Pirelli I*) heard before me in July 1995. My decision in that case was issued in July 1996, and I take administrative notice in this case of the record in the prior case.

Based on the findings of fact and conclusions of law in the underlying Pirelli case and the testimony, exhibits, stipulations, and the record as a whole in the instant case, I make the following

FINDINGS OF FACT

In the underlying case, I found that the Respondent Pirelli Cable (the Respondent or the Company) was an employer within the meaning of Section 2(6) and (7) of the Act and that the International Brotherhood of Electrical Workers, Local Union 2236, AFL–CIO, CLC (the Union) was a labor organization within the meaning of Section 2(5) of the Act and I find the pleadings and record establish these findings in this case (*Pirelli II*) also and that this case is properly before the National Labor Relations Board (the Board) which has jurisdiction thereof.

In the underlying case, I found that Respondent violated Section 8(a)(1) of the Act during contract negotiations by the issuance of an unlawful threat to its employees that in the event they went out on a strike they could "lose their jobs" and failing to inform them of their rights under *Laidlaw Corp.*, 171 NLRB 1366 (1968), enfd. 414 F.2d 99 (7th Cir. 1969), to be placed on a preferential hire list in the event they were permanently replaced if they engaged in a strike against the employer. At two membership meetings at which the Union presented the Respondent's two "final proposals" to the membership, the Union received strike authority from the membership and called a strike on May 5, which lasted until June 20, 1994, when the Union made an unconditional offer to return to work on behalf of the strikers. At that time the Respondent declined to return the strikers to work as they

would have been entitled to as unfair labor practice strikers. However, the Respondent's corporate manager for human relations and compliance, Scott Janoch, and Local Union President David Land agreed to a preferential hire list which would initially consist of eight former strikers who had quit the strike prior to June 20 and had not yet been reinstated and thereafter the remaining strikers in order of seniority. The agreement states in pertinent part "as openings occur employees shall be returned in order of their placement on that list and in accordance with their qualifications to perform the work available."

In the underlying case, I found that the strike was an unfair labor practice strike in that the threat of job loss was an unlawful threat in violation of Section 8(a)(1) of the Act and was a contributing factor in causing the strike. I concluded that the Respondent's refusal to reinstate the unfair labor practice strikers on their unconditional offer to return to work made on their behalf by their union representative, Local Union President David Land, was a violation of Section 8(a)(3) and (1) of the Act. I further found based on the evidence at the prior hearing that assuming arguendo, the strike was an economic strike and that the strikers were only entitled to be placed on a preferential hire list and reinstated only as vacancies occurred that the Respondent had violated Section 8(a)(3) and (1) of the Act by engaging in a scheme to frustrate, delay, and deny the reinstatement rights of the strikers by utilizing supervisors to do bargaining unit work, combining jobs, eliminating positions in the absence of proof of a lawful business justification for doing so, the internal bidding of jobs and refusal to permit jobs to be bid on by the strikers.

In the instant case before me [Cases 11–CA–16670, 11–CA–16708, 11–CA–16727, 11–CA–16754, and 11–CA–16844], the Respondent terminated the employment rights of employees Winston D. (Doug) Sparks, Franklin Page, Robert Prince, Eugene Gray, Samuel Brownlee, Kevin Sellers, Timothy D. Sparks, Stanley Chiles, Kim Ashley, Melvin Ashley, James Coleman, Robert Donaldson, Bernard Freeman, Wesley Gibson, Larry Gray, Dexter Harris, James Oliver, Bobby Lee Paul, Rhett Simpson, Johnny Slay, Lonnie Thompson, and Walter M. (Mark) Anderson at various dates when Willene Driggers who was then acting human resources manager at the Pirelli plant terminated them as their name came up on the preferential hire list according to their seniority on the basis that they were otherwise employed. Driggers testified that she terminated employees as jobs became open for them for which they would have been entitled to on the basis of their qualifications and seniority on the preferential hire list and did so on the premise that they had obtained other jobs. She did so acting on orders from Corporate Human Resources Manager Scott Janoch and on advice of Respondent's legal counsel, Richard Morgan. She did not terminate the employees until an opening occurred to which they were entitled to fill from the preferential hire list. She made no attempt to ascertain whether the employees' other jobs were regular and substantially equivalent to their former positions at Pirelli. In one instance involving employee Robert Prince, she terminated him even though he no longer had the other job at the time an opening occurred which he would have been entitled to by reason of his qualifications and seniority. In another instance employee Walter M. (Mark) Anderson was terminated as a position became open to which he was entitled by reason of his qualifications and seniority on the preferential hire list and he was then told to apply at a temporary hiring agency which was used to staff these positions and put into the job and subsequently hired to the job as a "new" employee. It was established by unrebutted testimony, exhibits, and stipulations received at the hearing that all of the aforementioned employees were terminated notwithstanding the fact that they either sent letters to Respondent or otherwise confirmed their desire to return to work at Respondent.[1]

Analysis

Initially, I found in *Pirelli I* that Respondent violated Section 8(a)(3) and (1) of the Act by refusing to reinstate the unfair labor practice strikers on their unconditional offer to return to work on June 20, 1994, as I had concluded that the strike was an unfair labor practice strike and that as unfair labor practice strikers, they were entitled to be reinstated immediately on their unconditional offer to return to work. I also found, assuming arguendo the strike was an economic strike, that Respondent violated Section 8(a)(3) and (1) of the Act by delaying and denying the former striker's rights as economic strikers to be placed on a preferential hire list and recalled as openings arose in accordance with the return-to-work agreement entered into by the Respondent and the Union on behalf of the strikers. That agreement had expanded the rights of the strikers by its terms wherein they were to be returned to any positions for which they were qualified rather then restricted to returning to their old jobs or to substantially equivalent jobs. *Rose Printing Co.*, 304 NLRB 1076 (1991). Those findings and conclusions of law and the Order in *Pirelli I* clearly apply to all of the former strikers listed in this proceeding.

However, assuming arguendo that the Board does not adopt either finding as set out in *Pirelli I*, I will address the issue of Respondent's termination of the employees from the preferential hire list which occurred in this case. The employer has the burden of proof to establish that a striker has obtained substantially equivalent employment with another employer so as to extinguish his rights as an employee with his original employer against which he engaged in the strike. *Salinas Valley Ford Sales*, 279 NLRB 679 (1986); *Arlington Hotel*, 273 NLRB 210, 216 (1984).

In the instant case, I find that the Respondent wholly failed to meet this burden as it failed to establish that the jobs obtained by the employees with other employers were substantially equivalent to their jobs at Pirelli. These employees' reinstatement rights were terminated by Driggers without regard to whether they had obtained substantially equivalent employment. Rather, the Respondent seized on their having obtained other employment to terminate their employee rights whenever their name came up for any job openings in accordance with the manner in which Respondent was recalling employees to work from the preferential hire list. I find based on Respondent's animus against the strikers as found in *Pirelli I*, that these terminations were but another unlawful effort by Respondent to rid itself of the strikers and that the General Counsel has demonstrated that the Respondent acted with a discriminatory motive in this

[1] Pursuant to the stipulation of the parties at the hearing, Respondent's posthearing exhibits (R. Exhs. 61–92) are received.

case. I find the Respondent has failed to rebutt this finding by demonstrating any legitimate business justification for terminating these employees and has failed to establish that they would have been terminated in the absence of Respondent's unlawful motive in attempting to rid itself of the strikers because of their engagement in the strike. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); *Manno Electric*, 321 NLRB 278 (1996).

However, assuming arguendo that Respondent's actions in terminating the employment rights of the aforesaid employees were not motivated by an unlawful purpose, I nonetheless find that the Respondent has failed to meet its burden of proof to establish that the employees had obtained substantially equivalent employment such as to justify their termination as employees of Respondent.

Thus, by unrebutted testimony, exhibits of letters sent to Respondent and the stipulation of the parties it was established that each of the strikers who were so terminated in this case tendered notice to Respondent that they continued to seek to return to work for Respondent. Further, no determination as to whether the strikers' new jobs at other employers were substantially equivalent to their former positions with Respondent was made by Driggers before she terminated them. In addition to their pay at Pirelli, the former strikers were eligible for benefits including vacation, pension, health and life insurance and Respondent has failed to show that any of the strikers were eligible for all of these benefits or substantially equivalent benefits at their then current place of employment at the time of their termination. Thus, I find Respondent failed to establish that the new positions held by these employees at other employers were substantially equivalent to those they held at the Respondent. *Marchese Metal Industries*, 313 NLRB 1022 (1994). As the General Counsel contends in his brief the testimony and exhibits concerning the new jobs held by these employees after the strike are irrelevant as they were never part of the decision making process engaged in by Driggers as to whether to return them to work or to terminate them when their name came up on the preferential hire list to fill vacancies. Moreover, assuming arguendo that they were relevant, there is no nexus between this information and a determination that the other employment of any of these employees was substantially equivalent as Driggers admittedly did not use this information and moreover there has been no showing that the pay and benefits available at the new employers were substantially equivalent to the pay and benefits at the Respondent.

The use of Pirelli employees as temporary employees and new hires

Walter (Mark) Anderson was hired by Respondent on April 18, 1989, and had held the positions of server operator and jacket line operator. He went out on strike in May and was placed on the preferential hire list. Respondent sent him a letter dated September 15, 1994, informing him that he had been removed from the preferential hire list because he had obtained another job. However, on or about that date Supervisor Jerri Stone got word to him that she wanted to talk to him. He went to her home on Sunday, September 17. She told him that Respondent desired to hire jacket line operators but she was not aware of who would be hired. He told her he wanted to return to work as his wife was pregnant. He received the letter on September 18 and on that evening Stone called him and told him she would rehire him if he went to employment staffing, a temporary staffing service. He did so and filled out an application with the service, was then interviewed by Driggers and was put to work at his old job but as a temporary employee and after 2 days he was rehired by Respondent as a new employee and Respondent paid the temporary service a penalty. Additionally, Respondent rehired employees Larry Gray and John (Andy) Bannister through this temporary service after having terminated Gray from the preferential hire list. At the time of Bannister's rehire, he was still on the preferential hire list. Respondent hired Howard Gray on September 13, 1973. Gray went out on strike and has never been placed on the preferential hire list. Respondent contends Gray's claim should be dismissed as untimely. I reject this assertion however as Respondent had the sole possession of the rehire list and never informed Gray that he was not on it and did not convey any information as to Gray's status thus placing him in a state of uncertainty. Moreover, his claim relates back to the original charge regarding the preferential hire list and Respondent's unlawful refusal to recall him as either an unfair labor practice striker or an economic striker is a continuing violation.

Analysis

I find that the foregoing conduct by Respondent in requiring employees Anderson, Larry Gray, and John (Andy) Bannister to be hired as temporary employees and ultimately as new hires violated Section 8(a)(3) and (1) of the Act as did the refusal or failure of Respondent to recall Howard Gray to work as either an unfair labor practice or economic striker. The subterfuge engaged in by Respondent in terminating these employees and then rehiring them as new employees as set out above serves to illustrate the lengths the Respondent went to in order to ensure that strikers were not recalled to work as either unfair labor practice strikers or economic strikers.

The refusal to bargain and violation of the return-to-work agreement

It is undisputed and I find that the Respondent withdrew its recognition from the Union as found in *Pirelli I* and continues to refuse to bargain with the Union and has thereby violated Section 8(a)(5) and (1) of the Act. I further find on the basis of the evidence presented, stipulation of the parties and the record in *Pirelli II* that the Respondent has employed temporary employees during May 1995, and thereafter and thereby failed to recall unreinstated strikers in accordance with its agreement with the Union concerning the placement of the strikers on a preferential hire list, and on August 15 and 21, 1995, and thereafter has failed to recall unreinstated strikers in accord with the agreement with the Union and since May 1995, and on or about September 15, 20, 21, and 27, 1995, has recruited and hired new employees and temporary employees through a temporary agency, and thereby has failed and refused to recall unreinstated strikers in accord with its agreement with the Union, all in violation of Section 8(a)(5) and (1) of the Act.

The discharge of Charles Tinch

Charles Tinch became an employee of Respondent on August 24, 1981, and had worked as a supply man, server operator, and a paper insulator until the strike. Tinch suffers from the condition of sleep apnea wherein he falls asleep for brief periods when he is sitting in a resting position and not actively engaged in any work activity. In 1987 former supervisor, Curtis Paul, observed Tinch suffer such a sleep episode and encouraged him to seek medical attention which Tinch did. The sleep apnea was diagnosed and Tinch underwent surgery to correct the condition which was performed at the Respondent's expense. Tinch testified that the surgery was only partially successful and he continued to fall asleep four or five times during his shift. Throughout the years Respondent accommodated Tinch's disability and he remained an employee in good standing and without ever being disciplined for sleeping on the job. Tinch went on strike on May 5, 1994, and was not recalled until September 25, 1994, when Driggers telephoned him and asked if he desired to return to his old job. Tinch informed her he did and he was called in by Driggers for an interview and she asked him to sign a document she had prepared which stated that his sleep apnea was cured. He refused to do so but did agree to sign the document stating that his condition was "improved." Driggers sent a specially prepared memorandum to the supervisors of the areas where Tinch would be assigned which informed them that she had given Tinch a copy of attendance guidelines and had told him his performance must improve if he was to remain employed by Respondent and told them to keep her informed regarding Tinch's job performance.

On October 24, Tinch was operating a forklift and was required to sit at rest because of a computer malfunction whereupon he fell asleep and was discovered by Supervisor Robert New who brought Tinch to his office and inquired whether Tinch still had the sleep apnea problem and Tinch replied that he did and told New there was no cure. New told Tinch he would have to give him a warning and report the incident to Driggers. New recommended to Driggers that Tinch be suspended for 3 to 5 days. New had previously suspended employee John Spearman for 3 days in 1991, after an incident in 1991 and a year earlier one. New acknowledged at the hearing that had he not been restrained by Driggers' memo, he would have suspended Tinch as he had suspended Spearman and another employee, James Coleman. However, Driggers ordered him to discharge Tinch and Driggers prepared a memo of the incident and noted that Tinch had been "away from work from 5/4/94 until his return on 9/26/95 *due to the strike.*"

Analysis

The General Counsel has demonstrated that Tinch's engagement in protected concerted activity in engaging in the strike was a motivating factor contributing to the discharge of Tinch. Initially, Tinch was subjected to an interview, required to sign a document that his sleep apnea was improved, and told his job performance must improve and his supervisors were instructed to report any problems to Driggers all as condition of Tinch's being recalled from the preferential hire list. Thus, although Respondent had accommodated Tinch's condition of sleep apnea for years, it suddenly imposed conditions on his return to work and in effect treated him as being on probation or having returned from a suspension or medical leave of absence although he had been actively employed prior to his engagement in the strike. I thus find that whereas Respondent had tolerated Tinch's condition in the past it now treated him disparately and discharged him solely because of his engagement in the strike. Respondent's arguments in this case are not meritorious as it is clear that but for his engagement in the strike Tinch would have continued as an employee in good standing whose medical condition was accommodated by Respondent. I thus find that Respondent violated Section 8(a)(3) and (1) of the Act by its discharge of Tinch. *Wright Line*, supra.

CONCLUSIONS OF LAW

1. The Respondent is an employer within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The appropriate unit is:

> All production and maintenance employees, including shipping and receiving employees, inspectors, and leadmen employed by the Respondent at its Abbeville, South Carolina, plant and warehouses, but excluding office clerical employees, professional employees, casual employees, guards, janitors, and supervisors as defined in the Act.

4. Respondent violated Section 8(a)(3), (5), and (1) of the Act by the termination and refusal to reinstate as unfair labor practice strikers or economic strikers the following employees:

Winston D. (Doug) Sparks	Robert Donaldson
Franklin Page	Bernard Freeman
Robert Prince	Wesley Gibson
Eugene Gray	Larry Gray
Samuel Brownlee	Dexter Harris
Kevin Sellers	James Oliver
Timothy D. Sparks	Bobby Lee Paul
Stanley Chiles	Rhett Simpson
Kim Ashley	Johnny Slay
Melvin Ashley	Lonnie Thompson
James Coleman	Walter M. (Mark) Anderson

5. Respondent violated Section 8(a)(3), (5), and (1) of the Act by its refusal to immediately reinstate the above-named employees to their former positions or to substantially equivalent positions if their former positions no longer existed as unfair labor practice strikers and/or economic strikers and to make them whole for the discrimination against them by reason of the deletion of their names from the preferential hire list and all other employees whom it failed to recall by its unlawful usage of the preferential hire list and/or by its use of a temporary employment agency to fill such positions and by its termination of James Canady and Howard Gray.

6. Respondent violated Section 8(a)(3) and (1) of the Act by its disparate treatment of Charles Tinch in recalling him to work from the preferential hire list but subject to the imposition of a condition concerning his health and by discharging and failing to reinstate him because of his engagement in the strike.

7. Respondent violated Section 8(a)(5) and (1) of the Act by its continuing refusal to bargain with the Union concerning the employment of temporary employees and by its failure to recall unreinstated strikers in accordence with the return to work agreement.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in violations of the Act, it will be recommended that Respondent cease and desist therefrom and take certain affirmative actions designed to effectuate the purposes and policies of the Act and post the appropriate notice.

It is recommended that Respondent offer immediate reinstatement to each of the employees who engaged in the strike including Charles Tinch to their prior positions or to substantially equivalent ones if their former positions no longer exist, discharging if necessary any replacement employees. These employees shall be made whole for all loss of backpay and benefits sustained as a result of Respondent's failure and refusal to recall them and the imposition of the unilateral changes with backpay and benefits computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987),[2] and on request bargain with the Union.

[Recommended Order omitted from publication.]

[2] Interest shall be computed at the "short term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.